

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	Criminal No. 01-455-A
ZACARIAS MOUSSAOUI	)	

**MOTION AND MEMORANDUM FOR REGULAR CELL-SIDE ACCESS TO  
MR. MOUSSAOUI BY STAND BY COUNSEL, AND THEIR MENTAL HEALTH EXPERTS**

COMES NOW, stand-by counsel, and moves this Court to order the U.S. Marshals Service to arrange with the Alexandria Detention Center for regular cell-side access to Mr. Moussaoui by stand by counsel and their mental health experts.<sup>1</sup>

**BACKGROUND**

But for a brief contact by Mr. Yamamoto, stand by counsel has not spoken with Mr. Moussaoui since April 22, 2002.<sup>2</sup> Despite repeated attempts, Mr. Moussaoui has declined all visits with counsel or their staff. Counsel get no further than the downstairs of the jail, and have not been permitted cell-side access.<sup>3</sup> Correspondence from stand by counsel to Mr. Moussaoui is returned. Dr. Patterson, the Court appointed expert, was finally able to get Mr. Moussaoui to talk

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<sup>1</sup> At the April 22, 2002 hearing, following Mr. Moussaoui's request to represent himself, the Court advised "[i]f you wind up becoming standby counsel, I'm still going to require that you make efforts to communicate with the defendant about some of these deadlines and what he has to do." [Tr. At 57].

<sup>2</sup> As noted by the Court's July 11, 2002 order, Mr. Moussaoui "has vehemently and categorically refused to meet with or even accept communications with Mr. Yamamoto." [C.R. 310]. Mr. Yamamoto was permitted cell access to Mr. Moussaoui, but rather than talking, Mr. Moussaoui read aloud from the Koran as Mr. Yamamoto attempted to talk with him.

<sup>3</sup> With cell-side access, counsel can observe Mr. Moussaoui through the "food slot," and talk with him.

to him, though not as fully requested, by continuing to see Mr. Moussaoui at his cell. These cell-side visits by Dr. Patterson were carried out pursuant to the Court's order that Dr. Patterson examine Mr. Moussaoui.<sup>4</sup> The jail has advised, that absent a court order, it will not accommodate the requested cell-side visits.

**CELL-SIDE VISITS ARE REQUIRED IN ORDER FOR STAND BY COUNSEL TO BE OF MEANINGFUL ASSISTANCE TO MR. MOUSSAOUI, AND/OR PREPARE A DEFENSE**

Dr. Amador notes in his declaration in support of this motion that cell-side visits by stand by counsel, or appropriate staff, as well as by defense mental health experts are both clinically and forensically necessary. (See Attachment A.)<sup>5</sup> Stand by counsel sought the advice and assistance of Dr. Amador regarding the steps they should take to attempt a reconciliation of the relationship in order to be able to assist Mr. Moussaoui in that role (or as counsel if reinstated), to continue to assist in determining competence issues, and to continue to explore the existence of mental health issues relevant to the guilt and/or penalty phases of the trial.<sup>6</sup>

As can be seen from Dr. Amador's declaration, regular cell-side visits are essential to Mr. Moussaoui's psychological, as well as legal, well-being. See Attachment A, paragraphs 10-12 (noting the effects of increased paranoia, and the importance of regular contact with those who do not share the paranoid preoccupations). If Dr. Amador is wrong about Mr. Moussaoui's mental state, cell-side visits will surely do no harm, and in fact would permit Mr. Moussaoui the opportunity to

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<sup>4</sup> The cell door was actually opened for Dr. Patterson, and he was permitted inside. Though inside cell visits would be far preferable, for the interim, this motion requests the less intrusive opportunity for regular cell-side "food slot" visits.

<sup>5</sup> Attachment A is filed Under Seal.

<sup>6</sup> This seems even more essential than ever following the telephone conference call with the Court on July 15, 2002.

show that he can communicate rationally, something the Court will need to know in the event he is permitted to examine witnesses and make arguments to a jury.

Second, with regard to stand by counsel's obligation to be prepared to defend Mr. Moussaoui should he be relieved of his *pro se* status, cell-side visits by defense mental health experts are essential. Defense experts have already highlighted, given Mr. Moussaoui's conduct, writings, and history, the likelihood that Mr. Moussaoui is suffering from a major mental illness. This evidence puts counsel on notice of the need to further investigate Mr. Moussaoui's mental health so that appropriate Rule 12.2 and/or the requested penalty phase mental health notices can be provided.<sup>7</sup> Access to Mr. Moussaoui by defense mental health experts, who have already studied his writings and background, will further assist in the continuing evaluation of his competence to proceed.

### **CONCLUSION**

For the reasons stated above, and as set forth in the declaration of Dr. Amador, it is respectfully requested that the Court direct the U.S. Marshals to arrange with the Alexandria Detention Center for regular cell-side visits by undersigned or their staff, and with defense mental health experts.

Respectfully submitted,

STAND-BY COUNSEL

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<sup>7</sup> See Government's Motion and Incorporated Memorandum Regarding Mental Health Evidence [C.R. 93] and Response [C.R. 103].

/S/

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#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion and Memorandum for Regular Cell-Side Access to Mr. Moussaoui by Stand by Counsel, and Their Mental Health Experts was served via facsimile and first class mail upon AUSA Robert A. Spencer, AUSA David Novak, and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, Virginia 22314 and via first class mail to Zacarias Moussaoui, c/o Alexandria Detention Center, 2001 Mill Road, Alexandria, VA 22314 this 17th day of July, 2002.

/S/

Frank W. Dunham, Jr.

**ATTACHMENT A**

**FILED UNDER SEAL**